IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shantilal & Anr. v. Kanhaiyalal @ Krishna Chandra & Anr.

S.B.CIVIL WRIT PETITION NO.776/2004
under Articles 226 and 227 of the Constitution of India.

Date of Order : 9th November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sajjan Singh, for the petitioners.
Mr. P.S.Bhati, for the respondents.

BY THE COURT :

By this petition for writ validity and propriety of the order dated 21.11.2003 passed by learned Additional District Judge No.2, Udaipur is questioned. The circumstances giving rise to present petition are as follows:-

The respondent plaintiff filed a suit against one Smt.Bhuribai widow of Shri Bhawanishankar Ameta seeking a decree for partition of the alleged joint property claiming himself to be adopted son of Shri Bhawanishankar. Smt.Bhuribai denied the plaintiff's claim with a specific assertion that Shri

Bhawanishankar never adopted the plaintiff as his son. Smt.Bhuribai before her death on 2.11.1991 sold the property in question to present petitioners by a registered sale deed dated 12.9.1989, consequently the petitioners became party to the suit and are now the defendants.

By an order dated 14.7.1999 learned trial court rejected an application preferred by defendant petitioners under Order 13 Rule 2 CPC with a prayer to take on record a photostat copy of the judgment dated 6.6.1987 passed by learned Additional Chief Judicial Magistrate No.3, Udaipur in the case of State v. Krishna Chandra @ Kanhaiyalal (original Cr.Case No.188/85). The defendant petitioners wanted to bring the copy of judgment referred above on record as according to them the plaintiff was accused in that case and defended himself as Kanhaiyalal @ Krishna Chandra son of Nandlal Ameta.

The core question for adjudication before the trial court in present suit is whether the plaintiff is adopted son of Bhawanishankar Ameta and is entitled to any right in the property in question, therefore, the judgment dated 6.6.1987 passed by Additional Chief Judicial Magistrate No.3, Udaipur was considered by the defendant petitioners as a material piece of evidence, hence they preferred the application under Order 13 Rule 2 CPC. The said application was rejected

by the trial court on the grounds that (1)the defendant appellant failed to gave sufficient reason to produce photostat copy of the document instead of its certified copy; (2)no reason sufficient to cause delay in submitting application to bring the document concerned on record is given; (3)the plaintiff shall not be having opportunity to explain his stand about document in the event of taking document on record at this stage; and (4)the evidence of the defendant already stood closed, therefore, now by bringing the document on record the right to tender evidence cannot be opened.

On 14.7.1999 the trial court fixed the suit for hearing with an assumption that the evidence of the defendant petitioners stands closed. The petitioners, therefore, moved an application under Section 151 CPC praying for to permit them to lead evidence. The application so preferred stood rejected by an order dated 19.10.2000, hence a revision petition being No.75/2000 was submitted before this Court wherein an order dated 26.2.2003 was passed which reads as under:-

> "The learned counsel for the petitioner proposes a cost of Rs.2,000/- for being permitted to lead evidence which has been closed by the order which impliedly stated that the evidence of the petitioner is closed.

> Learned counsel for the respondent though has reservation about the proposition, but in the interest of justice he accepts the proposal that if the petitioner produces his entire evidence before the trial court on 10.3.2003, then the petitioner may be permitted to lead his evidence. If the entire evidence is produced and a cost of Rs.2000/- is given, the evidence of the petitioner will be taken by the trial court at its convenience. In case the petitioner fails, he will not be entitled to any further indulgence.
>
> Put up on 21.3.2003."

In pursuant to the order dated 26.2.2003 the defendant petitioners produced their evidence and the statements of one Shri Purshottamlal (DW-4) were recorded by the trial court. Shri Purshottamlal stated that at his instance a criminal case was lodged against the plaintiff in which after trial he was convicted. Proceedings in that case took place against the plaintiff as Kanhaiyalal @ Krishna Chandra son of Nandlal and in those proceedings plaintiff never stated that he is son of Bhawanishankar. DW-4 Shri Purshottamlal also stated that the original file of the criminal case has already been weeded out, however, a certified copy of the judgment dated 6.6.1987 passed by the Additional Chief Judicial Magistrate No.3, Udaipur convicting the plaintiff was produced by him before the Assistant Commissioner,

Devsthan in an another case between the plaintiff and one Smt.Parwati Devi. Shri Purshottamlal DW-4 further stated that he is having a photostat copy of the judgment referred above and he can produce the same before the Court.

The counsel for the defendant petitioners then made a request to the trial court to get the photostat copy of the judgment concerned exhibited. The plaintiff objected the same, therefore, an application was filed by the defendants permitting them to produce photostat copy of the judgment dated 6.6.1987 passed by Additional Chief Judicial Magistrate No.3, Udaipur as secondary evidence. The defendant petitioners also prayed to call for the record from the office of the Assistant Commissioner, Devsthan, Udaipur which contains certified copy of the judgment dated 6.6.1987 referred above.

The trial court by the order impugned dated 21.11.2003 rejected the application on the grounds that an application under Order 13 Rule 2 CPC preferred by the defendants to bring the same document on record was earlier rejected, therefore, by a separate application defendants cannot be permitted to bring the same document on record, the defendants did not mention the document now sought to be produced in the list of documents filed under Order 7 Rule 18 CPC and on the count that the evidence of plaintiff was

already closed, therefore, now he will not be having any chance to tender explanation about the document. Being aggrieved by the order aforesaid this writ petition is preferred by the defendant petitioners.

Heard counsel for the parties and also examined record of the petition.

Learned trial court dismissed the application preferred by the defendant petitioners on various grounds including the ground that defendants did not mention the document now sought to be produced in the list of documents filed under Order 7 Rule 18 CPC. In fact Order 7 Rule 18 CPC is having no application in present controversy as it relates to inadmissibility of document not produced by the plaintiff at the time of presenting plaint. Present one is a case which relates to the document sought to be produced by defendants. The trial court while rejecting the application preferred by the defendants much relied upon the order dated 14.7.1999 rejecting the application under Order 13 Rule 2 CPC. While doing so learned trial court totally ignored the order dated 26.2.2003 passed by this Court permitting the defendant petitioners to produce evidence in pursuant to which statements of DW-4 Shri Purshottamlal were recorded. It is true that in accordance with Order 8 Rule 1(2) CPC the defendant is required to annex the list of documents on which he relies while presenting

written statement, however, he may with leave of the Court produce a document in evidence though not entered in the list referred in Order 8 Rule 1(2) CPC. Order 8 Rule 1(5) CPC gives a broad discretion to the Court in this regard. Such discretion vested with the Court is required to be exercised judiciously. If the defendant gives good and sufficient reason for not entering the document sought to be produced and called for in the list annexed to the written statement, the Court should grant him leave to do so as the basic criterion to exercise the discretion given to a Court is effective adjudication of the dispute between the parties.

In the instant case by an order of this Court defendants were permitted to lead evidence and in pursuant thereto statements of Shir Purshottamlal (DW-4) were recorded. Shri Purshottamlal in his statements gave reference of the document which is a judgment of competent court. The core issue involved in this suit is with regard to adoption of plaintiff by Bhawanishankar and the document referred by DW-4 is having material bearing to the issue, therefore, the document is important for effective adjudication of the suit. No harm or prejudice is going to be caused to the plaintiff in event of production of document concerned or by calling certified copy of the same from the office of the Assistant commissioner as the plaintiff's right for rebuttal is open.

In view of whatever discussed above I am of the considered opinion that the view taken by the trial court while rejecting the application preferred by the defendant petitioners by the order impugned is erroneous.

Accordingly, the writ petition succeeds and the same is allowed. The order impugned dated 21.11.2003 is quashed. The application preferred by the defendant petitioners to bring photostat copy of the judgment dated 6.6.1987 passed by Additional Chief Judicial Magistrate No.3, Udaipur in Cr.Case No.188/85 titled as State of Rajasthan v. Shri Krishna Chandra @ Kanhaiyalal son of Nandlal Ameta, resident of Brahampole, Hal Badi Pole, Hathithan, Udaipur is allowed. The document referred above is ordered to be taken on record and further the record from the office of the Assistant Commissioner, Devsthan, Udaipur containing certified copy of the judgment referred above is ordered to be called for. The plaintiff respondent shall be having a right to submit his rebuttal with regard to the evidence produced by the defendant.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.